



NOTICE OF PUBLIC HEARINGS
Regarding
Proposed Model Affiliate Sales Tax Nexus Statute

The MULTISTATE TAX COMMISSION will conduct three public hearings to obtain comments from interested parties on a Proposed Model Affiliate Sales Tax Nexus Statute setting forth the circumstances under which an out-of-state business making sales into a state has nexus for sales taxes based on actions of an affiliate in the state. The Proposal is appended to this Notice as Exhibit A.

The first hearing on the Proposal is scheduled for:

TUESDAY, JANUARY 4, 2005, 1:00 P.M.
Oakland State Office Building
1515 Clay Street, Suite 306
Oakland CA 94612

Additional hearings will be scheduled in New York and Chicago in February and March.

All comments received as part of the hearing process will be set forth in a hearing officer's report that will be submitted to the MTC Executive Committee. The Committee will read what you say and then will consider the Proposal for appropriate action. *See* MTC's Uniformity Recommendation Development Process step seven, available at www.mtc.gov/uniform/9steps.htm

The hearing officer for this matter is Frank D. Katz. Please submit all questions, comments and correspondence regarding this hearing matter to: Frank D. Katz, Multistate Tax Commission, 444 N. Capitol Street, N.W., Suite 425, Washington, D.C. 20001-1538, Phone: (505) 982 4351, Fax: (505) 982 4379, E-mail: fkatz@mtc.gov

All interested parties are invited to participate in these public hearings. Parties wishing to make formal oral presentations are requested to notify the hearing officer in writing at least two (2) working days prior to the hearing date. Written comments are acceptable and encouraged. They may be submitted at any time prior to or on the hearing dates or by such later date as may be announced at the closing of the public hearings. Interested parties may participate by telephone. Please contact the hearing officer for specific instructions on how to connect by telephone.

Exhibit A

Multistate Tax Commission

Proposed Model Affiliate Sales Tax Nexus Proposal

November 11, 2004

As approved by the MTC Executive Committee for Public Hearing

A. An out-of-state vendor has substantial nexus with this State for the collection of use tax if both of the following apply:

- (1) the out-of-state vendor and an in-state business maintaining one or more location within this State are related parties; and
- (2) the out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark or goodwill to develop, promote, or maintain sales, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

B. Two entities are related parties under this section if they meet any one of the following tests:

- (1) both entities are component members of the same controlled group of corporations under section 1563 of the Internal Revenue Code;
- (2) one entity is a related taxpayer to the other entity under the provisions of section 267 of the Internal Revenue Code;
- (3) one entity is a corporation and the other entity and any party, for which section 318 of the Internal Revenue Code requires an attribution of ownership of stock from that party to the entity, own directly, indirectly, beneficially, or constructively at least 50 percent of the value of the outstanding stock of the corporation; or
- (4) one or both entities is a limited liability company, partnership, estate, or trust, none of which is treated as a corporation for federal income tax purposes, and such limited liability company, partnership, estate, or trust and its members, partners or beneficiaries own in the aggregate directly, indirectly, beneficially, or constructively at least 50 percent of the profits, capital, stock, or value of the other entity or both entities.